

Case Summary

Antonio Jefferson appeals his conviction for Class B felony burglary. We affirm.

Issue

The sole issue is whether there is sufficient evidence to support Jefferson's conviction.

Facts

Shortly after midnight on April 2, 2006, Indianapolis Metropolitan Police Department officers were dispatched to a duplex at 48-50 South Denny Street to investigate an alleged burglary. The resident of 50 South Denny had called 911 after hearing noises and the voices of two men coming from next door; she knew that the occupants of 48 South Denny were not home.

Upon arriving at the duplex, Officer Frank Vanek walked to the back of the duplex while Officer Kevin Hershberger talked to two persons sitting on the front porch of 50 South Denny. Officer Vanek saw Jefferson walking from the side yard of 48 South Denny to the backyard with his hands in his pockets. Officer Vanek ordered Jefferson to show him his hands, and Jefferson responded by turning and running toward the front of the building. Officer Hershberger ordered Jefferson to stop, but he continued running and jumped at least three fences trying to get away. Officer Hershberger briefly lost sight of Jefferson, but Jefferson then walked back towards Officer Hershberger and complied with an order to get down on the ground. Officer Hershberger searched Jefferson but found no weapons or drugs. After being Mirandized, Jefferson told Officer Hershberger

that he had gone to 48 South Denny to “retrieve” tire rims that he believed the residents had stolen from him, and that the rims were in the basement of the house. Tr. p. 21.

Officers noted that the side door of 48 South Denny had been forcibly opened. This door led to a stairwell going into the basement, and another door that led into the rest of the house. This door was locked and did not appear to have been tampered with. Officers knocked on the front door of 48 South Denny but received no answer, and they left the scene.

About two or three hours later, the residents of 48 South Denny returned home and called police. The interior of the residence had been ransacked. A gun was found that did not belong to the residents. Nothing had been stolen, however, except for a watch. Neither of the residents knew Jefferson.

The State charged Jefferson with Class B felony burglary, Class D felony theft, and Class A misdemeanor resisting law enforcement. A bench trial was held on July 13, 2007. At the conclusion of the State’s case-in-chief, the trial court entered judgment on the evidence acquitting Jefferson of theft, after the State failed to produce any evidence that Jefferson had any stolen property. Jefferson then testified that he had gone to the duplex with a friend who was visiting his girlfriend there, while he (Jefferson) waited outside. He also said that he and his friend had smoked marijuana before going there. He also explained that he had gone to check on his friend when he ran into Officer Vanek, and that he fled because he was in possession of marijuana. He said that he hid the marijuana under a porch or shed, and that is when he stopped fleeing. Officer Hershberger testified that Jefferson did not appear to have recently smoked marijuana,

nor did he smell like marijuana. Officer Hershberger also found Jefferson's cell phone by retracing the path along which he had fled, but did not find any marijuana. The trial court convicted Jefferson of both burglary and resisting law enforcement. Jefferson now appeals only his burglary conviction.

Analysis

Jefferson claims the evidence is insufficient to support his burglary conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). It is the role of the fact-finder, not this court, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. Id.

“Mere presence at the crime scene is insufficient proof to support a conviction, but presence at the scene coupled with other circumstances tending to show participation in the crime may be sufficient to sustain a guilty verdict.” Rohr v. State, 866 N.E.2d 242, 248-49 (Ind. 2007). Circumstantial evidence is sufficient if it allows for reasonable inferences enabling the fact-finder to determine guilt beyond a reasonable doubt. Id. at 249.

Here, Jefferson was discovered walking very near the forced-in side door of 48 South Denny just minutes after the resident at 50 South Denny reported a possible burglary at that residence. Jefferson then fled upon seeing Officer Vanek. Jefferson contends that he fled because he did not want to be caught with marijuana in his possession. The trial court, however, was not required to believe Jefferson's testimony to that effect. "As a general rule, factfinders are not required to believe a witness's testimony even when it is uncontradicted." Thompson v. State, 804 N.E.2d 1146, 1149 (Ind. 2004). Additionally, Jefferson's attempt to bolster his claim about the marijuana by saying that he smoked some shortly before arriving at the duplex was contradicted by Officer Hershberger's testimony. After stating that he had much experience interacting with persons who had smoked marijuana, he noted that Jefferson neither smelled like marijuana nor appeared to be under the influence of marijuana.

There is also the fact that Jefferson gave widely divergent explanations for his presence at the duplex. What he told Officer Hershberger, i.e. that he was there to "retrieve" tire rims that he believed had been stolen from him by the residents of 48 South Denny, was at least slightly inculpatory. Tr. p. 21. What he said at trial was vastly different: that he simply was there with a friend who was visiting his girlfriend. The trial court clearly was in a better position than this court to assess the validity of these competing stories and to consider the latter to be a complete fabrication.

Admittedly, this case is curious in that it is unclear how Jefferson or anyone else entered the main part of the residence at 48 South Denny. Neither the front door nor the internal side door leading into the living area of the residence showed any sign of forced

entry. The internal side door, near where the external side door had been forcibly opened, was locked from the inside. Someone, however, clearly had entered the residence. There is sufficient circumstantial evidence, in the form of presence at the crime scene, flight, and the giving of contradictory stories, that Jefferson did so, either by himself or with someone else.

Conclusion

There is sufficient evidence to support Jefferson's burglary conviction. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.